



APPENDIX

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Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1335

UNITED STATES OF AMERICA,

Petitioner

—v.—

WILLIAM EARL MATTLOCK

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

**PETITION FOR CERTIORARI FILED APRIL 6, 1973
CERTIORARI GRANTED MAY 29, 1973**



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DOCKET ENTRIES

DATE	PROCEEDINGS
2/11/71	Filed indictment.
2/12/71	Warrant not issued at direction of U.S. Atty.
3/ 1/71	Filed letter from apptd. atty. Rikkers that he consents to the substitution of another attorney for the deft.
3/ 1/71	Called for hearing. Appearances: John O. Olson, U.S. Atty., atty. for pltf. Donald S. Eisenberg, prospective apptd. atty. for deft. Deft. present in person. It is ordered that Mr. Eisenberg is now apptd. atty. to represent deft., in each of these cases, and terminating Mr. Rikkers appointment.
3/ 1/71	Filed order appointing counsel.
3/ 5/71	Called for hearing. Appearances: John O. Olson, U.S. Atty., atty. for pltf. Donald S. Eisenberg, Court-apptd. atty. for deft. Deft. present. Deft. arraigned, but with certain conditions. See notes. Deft. arraigned and enters plea of not guilty. Motion by deft. to be enlarged on bail as previously set by the Court. Deft. enlarged on bail with conditions that deft. is to remain in the Western Dist. of Wis. and N. Dist. of Ill. unless prior permission is granted and Mr. Richard R. Nelson of Chicago will advise the FBI immediately if he fails actually to see the deft. for more than 24 hrs. at any one time. Filed bond.
3/18/71	Filed notice and motion of deft. to suppress evidence.
3/24/71	Filed deft's motion for subpoenas for indigent deft.
3/24/71	Filed order for the issuance of subpoenas for material witnesses in behalf of deft. and the Marhal [sic] is directed to serve the subpoenas and advance fees.
3/30/71	Filed subpoena issued to Mrs. Elaine Marshall.

DATE

PROCEEDINGS

- 3/30/71 Filed subpoena issued to Mr. Arman Ohnessorge.
- 4/ 5/71 Called for hearing on defense motions. Appearances: John O. Olson, U.S. Atty., atty. for pltf. Donald S. Eisenberg, Court-apptd. atty. for deft. Deft. present. All witnesses except Mr. Hunter are to remain outside the courtroom during the hearing until they are called. Evidence offered on behalf of deft.: Mr. Alan Thompson instructed by the Court that he is not to discuss with other Govt. witnesses any of the testimony given in court. Armin Ohnessorge, Gregg B. Hunter, Edward M. Radtke, Gary Cross, Elaine Marshall, and Gayle Graff called as witnesses on behalf of deft. Motion by Mr. Eisenberg that Gayle Graff be granted immunity from prosecution denied. William Earl Mattlock, deft., called as a witness. Defendant rests. Defense moves that the Court grant his motion to suppress. Armin Ohnessorge, Edward M. Radtke and Gregg Hunter called as witnesses on behalf of plaintiff. Hearing adjourned to 4/13/71 at 2:00 pm.
- 4/ 6/71 Filed eight subpoenas.
- 4/ 6/71 Filed order appointing counsel.
- 4/13/71 Called for furthering [sic] hearing. Appearances: John O. Olson, U.S. Atty., atty. for plaintiff. Donald S. Eisenberg, Court-apptd. atty for deft. Deft. present. Frederick T. Rikkers, Court-apptd. atty for Gayle Graff. Motion by Mr. Eisenberg to quash any further proceedings in any respect except the football game here: was there an illegal search and seizure, and did in fact Gayle Graff give her consent or could in fact she give her consent? and motion that anything else be not permitted. Further evidence: William Earl Mattlock, Gayle Graff and Elaine Marshall recalled for further cross examination. Joel M. Sanders, called as a witness on behalf of pltf. Pltf. rests. Richard R. Nelson called as a witness on behalf of deft. Defendant rests. Evidence closed. Taken under advisement.

DATE	PROCEEDINGS
4/13/71	Filed clerk's copy of the stenographic transcript of proceedings on 4/5/71.
4/14/71	Filed order inviting arguments on certain questions.
5/28/71	Filed opinion and order granting motion to suppress those items discovered and seized in the east bedroom of the Marshall house on 11/12/70 and the items to be returned to deft, denying motion to other items in the house seized on 11/12/70.
6/ 3/71	Filed request for evidentiary hearing.
6/ 7/71	Filed clerk's copy of stenographic transcript of proceedings held on 4/13/71, & 4/5/71.
6/ 7/71	Filed clerk's copy of stenographic transcript of proceedings held on 4/13/71.
6/14/71	Filed subpoenas. (9)
6/22/71	Called for further hearing on deft's motion for suppression of evidence. Appearances: John O. Olson, U.S. Atty., atty. for pltf. Donald S. Eisenberg, Court-apptd. atty. for deft. Further evidence on behalf of pltf; Kathryn Ann Derezeck, Susan Doucette, Mary Caroline Cupery, Clarke Gilbert Cupery, Durwent Millard, Jr., Leslie Wayne Cross, Donald L. Graff, Gary Cross, Edward M. Radtke, Armand Ottnsage [sic] and Mrs. Walter Marshall called as witnesses on behalf of pltf. Plaintiff rests. Defendant rests.
6/22/71	Filed interim opinion.
6/29/71	Filed subpoena issued to Kathryn Derezeck.
7/14/71	Filed clerk's copy of the stenographic transcript of proceedings held on 7/22/71 [sic: should read "6/22/71"].
1/ 4/72	Filed steno. trans. of proceedings on 4/5/72 [sic: should read "4/5/71"]. (Taken from 71-CR-79, U.S. v. Graff).

DATE	PROCEEDINGS
1/ 4/72	Filed steno. trans. of proceedings on 4/13/72 [<i>sic</i> : should read "4/13/71"] (Taken from 71-CR-79, U.S. v. Graff).
3/ 9/72	Filed opinion and order denying deft's motion to suppress except for the evidence obtained from a search of the east bedroom of the Marshall home and that will not be received at the trial of deft.
3/29/72	Filed plaintiff's notice of appeal for [<i>sic</i>] the order entered 3/9/72. Copy mailed to deft. and his attorney. Copy mailed to 7th Circuit.
5/ 5/72	Filed motion and supporting affidavit to extend time to file appeal record.
5/ 5/72	Filed order granting Govt.'s motion for extension of time to file appeal record.
6/ 8/72	Filed stenographic transcript of proceedings held on 6/22/72 [<i>sic</i> : should read "6/22/71"]
6/ 8/72	Record on appeal forwarded to Clerk of U.S. Court of Appeals for the Seventh Circuit.

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No. 71-CR-13

UNITED STATES OF AMERICA, PLAINTIFF

—vs—

WILLIAM EARL MATTLOCK, DEFENDANT

STENOGRAPHIC TRANSCRIPT

of testimony had upon hearing in the above-entitled criminal action in said court, sitting in the City of Madison, in said Western District and State of Wisconsin, the Honorable JAMES E. DOYLE, Judge, presiding, on Monday, April 5, 1971, commencing at 8:45 o'clock in the forenoon.

APPEARANCES:

JOHN O. OLSON, United States Attorney, Madison, Wisconsin, appeared on behalf of the plaintiff.

DONALD S. EISENBERG, Attorney at Law, Madison, Wisconsin, appeared on behalf of the defendant.

The defendant, William Earl Mattlock, was present in person.

* * * *

[2] MR. EISENBERG: I call Mr. Ohnesorge.

ARMIN OHNESORGE,

called as a witness by the defendant herein, having [3] been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. EISENBERG:

Q State your name and address here.

A Armin Ohnesorge, Rural Route 2, Pardeeville.

Q What is your occupation?

A I am a traffic captain for the Columbia County Sheriff's Department.

* * * *

[4] Q Were you involved in an investigation concerning the defendant, William Earl Mattlock, in November of 1970?

A Yes, sir.

Q In what capacity were you involved in that investigation?

A I did assist in the investigation as a deputy sheriff.

Q Who called you to assist?

A The dispatcher by radio. I was advised to assist in [5] the investigation.

* * * *

Q Did you proceed directly to the Marshall farm?

A Yes, yes, we did.

* * * *

[6] Q And when you arrived there, who, if anyone, was there?

A Do you want me to name all the people that I know was there?

Q How many people were there?

A Eight or ten people.

Q And what department, if any, were these people with?

A Our department and constable from the Village of Wyocena.

Q Was the automobile which was described to you present at the time you arrived?

A Yes, sir, it was.

Q Did you see the defendant, William Earl Mattlock, at that time?

A Yes, sir, I did.

Q Where was he?

A He was sitting in one of the officer's cars.

Q Was he handcuffed?

A I don't know.

Q Did you ever go up to the defendant to see whether or [7] not he was handcuffed?

A No, sir, I didn't.

Q What did you do when you arrived?

A I went over to Officer Cross and Officer Radtke, and they informed me that—

Q I don't care what they informed you. I want to know what you did.

A I went over to Officer Cross and Officer Radtke and asked them what happened up to this point.

Q To your knowledge, had they already been into the Marshall residence?

A No, sir, they had not been.

Q How much prior to the time that you arrived there, if you know, had Officers Cross and Radtke arrived?

A Let's say in the area of five or ten minutes.

Q Did you at any time talk to the defendant, William Earl Mattlock, prior to entering the home?

A No, sir, I did not.

Q And as of that time that you arrived, to your knowledge no one had yet entered the home?

A That's correct; they had not.

Q What, if anything, did you do then?

A We walked from the Westbush Road—and it is a road that runs parallel with the home—had our vehicles [8] parked there. We walked up to the house.

Q How many feet was that approximately?

A 150, 200.

Q Now, when you say "We walked up to the house", who was with you?

A Officer Radtke and Officer Cross.

Q Anyone else?

A Not that I recall.

Q All right. Then what did you do?

A Went up to the door and knocked.

Q Anyone come to the door?

A Yes, sir.

Q Who?

A I believe it was a young boy.

Q How young?

A Ten, twelve years old.

Q All right. What, if anything, did you say to him?

A I asked if his mother was home.

Q And what did he say?

A That she wasn't.

Q Then what did you do?

A Then he also stated that his sister was; and I asked the boy if I could talk to his sister.

Q Did his sister then come to the door?

[9] A Yes.

Q What time of the day was this?

A I would say in the vicinity of 9:30.

Q In the morning?

A That's correct.

Q All right. Did the sister come to the door?

A Yes.

Q What happened then, if anything?

A I asked her if I could come in.

Q And what did she say?

A Yes.

Q And did you then walk in?

A Yes, I did.

Q Did she ever object to your entering the premises?

A No.

Q Did you inquire whether the premises were hers?

A No.

Q Did you inquire whether or not the defendant, William Earl Mattlock, lived in those premises?

A Yes, sir, I did.

Q Who did you inquire from?

A The girl, Mrs. Graff.

Q When did you do that?

A A short time after I entered the home.

[10] Q Where were you when you asked her that question?

A Standing in the kitchen.

Q And where was she?

A Standing in the kitchen.

Q Where were Officers Cross and Radtke?

A Aside of me in the kitchen.

Q Then what happened?

A Then I asked her if I could search the home.

Q And what did she say to that?

A She consented, yes.

- Q She consented. What did she say, Officer?
A She said yes, we could search the home.
Q What exactly did you say to her?
A I asked her if I could search the home.
Q And she said, yes, go ahead and search the home?
A Yes. She said I have nothing to hide.
Q How old is Mrs. Graff?
A I would say in her early twenties.
Q Did you ask Mrs. Graff whether or not the defendant lived in that home?
A Yes, sir, I did.

* * *

- [12] Q Did you know which room in the house was occupied by the defendant, William Earl Mattlock?
A When I entered the house?
Q Yes.
A No, I did not.
Q Did you ever ask the defendant, Mr. Mattlock, permission to search his room?
A No, sir, I did not.
Q Did he in fact have a room in that house?
A Yes, he did.
Q And did you in fact search that room?
A Yes, sir, I did.
Q Did you have a search warrant?
A No, sir.
Q Did you or any other officers to your knowledge at any [13] time attempt to obtain a search warrant?
A We did not.
Q Now all during this time the defendant was in the squad car; is that correct?
A I believe so, yes.
Q Did you feel that your life was endangered in walking into that house?
A No, sir, I did not.
Q At any time did you feel that your life was endangered?
A No, sir.
Q What time did you leave the premises?
A I would say in the area of 10:00 o'clock; in the vicinity of 10:00 o'clock.

Q Did you return at any time to the Marshall home?

A Yes, sir, I did.

Q What time was that?

A Pardon me. When I mentioned 10:00 o'clock—Yes, I returned. I went out to the squad car. Then I returned to the Marshall home again within a matter of two or three minutes.

Q What did you go out to the squad car for?

A Went out to the squad car and we were going to leave and Officer Radtke—

Q I don't want to know what someone else told you. I [14] want to know what you did.

A I went out to the squad car and talked to Officer Radtke.

Q And then you went back into the house?

A Yes, sir.

Q Now, prior to that time did you take anything from the home?

A Yes, sir, I did.

Q What did you take?

A I took a bag of money.

Q And where did you find the bag of money?

A Upstairs, east bedroom of the home in a closet.

Q And was that the defendant's bedroom?

A Yes, sir.

Q It was identified to you as his bedroom?

A His and Gayle Graff's bedroom.

* * * *

Q Did you have permission to go back in the house a second time?

A Yes, sir, we did.

Q From whom?

[15] A Gayle Graff.

Q Did she protest to your coming into the house at that time?

A No, sir, she did not.

Q Where was she?

A I knocked on the door and she met us at the door.

Q You had to knock again; is that right?

A That's correct.

Q All officers had left the house by that time?

A Yes, sir.

Q And she graciously allowed you to come back into the kitchen?

A That's correct.

Q Did she ask any time to go out to the car to see Mr. Mattlock?

A Not that I recall.

Q She just said, go take whatever you want; is that right?

A No, she did not.

Q What did she say?

A I asked her if we could search the pantry area and she stated we could.

Q And you then searched the pantry area?

A Yes, sir.

[16] Q Do you know whether or not Gayle Graff owned that house?

A No, sir, I did not.

[20] Q Did Mrs. Marshall say anything to you after you entered the house?

A I believe she said—She gave us permission to go upstairs and go into the bedroom for another search.

Q You asked her permission and she said, go right ahead; is that what happened?

A No, one of the other officers did.

Q In your presence?

A Yes.

Q What exactly did he say?

A He asked her to sign a consent slip to search, which she did; and also asked her if we could search the bedroom.

Q And she said, go right ahead and search the bedroom?

A That's correct. She was very cooperative.

Q Did she tell you which bedroom belonged to William Earl Mattlock?

A I don't believe she told me that, no.

Q Did you inquire as to whether or not William Earl Mattlock paid room and board for that home?

A I didn't know.

Q Did you know whether or not he did?

A No, sir; I did not.

Q Isn't it a fact that Mrs. Marshall had a diabetic [21] attack while you were there?

A It is unknown to me. I don't recall any.

Q And the only officers were Cross, Radtke and the F.B.I. agent beside yourself?

A No. Radtke and another agent and Gregg Hunter and myself.

Q Just the four of you?

A Yes, sir.

Q And she told you, search wherever you want?

A She told us we could search the bedroom.

Q Did you find anything in the bedroom at that time?

A Yes, sir. I didn't find it; no, sir. I did not.

Q Did any agent or officer with you find anything?

A Yes, sir.

Q What?

A Five \$100 bills.

Q And in whose bedroom were they found?

A In the upstairs east bedroom.

Q That would have been Mr. Mattlock's bedroom; is that correct?

A Yes, sir.

Q Did you then leave the premises?

A Yes, sir.

Q Did you ever go back another time?

[22] A No, sir, I don't believe I did.

MR. EISENBERG: I have no further questions.

CROSS EXAMINATION

BY MR. OLSON:

* * *

[23] Q When did you first ask her [Mrs. Graff] if you could search?

A Right after we entered the kitchen area the initial time.

Q And tell us again what her response was?

A She was very cooperative and stated we could search the home.

Q And what did you do after she told you that?

A We asked her where Mr. Mattlock—where his bedroom was. Pardon me.

First we did look at the pantry area and we walked through the living room onto the front porch, came back into the kitchen. And then we asked where Mr. Mattlock's bedroom was—where he slept.

Q Did she indicate to you whether there was any relationship between herself and Mr. Mattlock?

MR. EISENBERG: Objection, leading.

MR. OLSON: It is cross examination, Your Honor.

THE COURT: Overruled.

THE WITNESS: No, sir, she did not. I assumed it was her husband.

MR. EISENBERG: Objection, ask that the [24] assumption be stricken.

THE COURT: The motion is granted, and I will disregard the assumption.

BY MR. OLSON:

Q All right. Did she indicate to you where Mr. Mattlock slept?

A Yes, sir, she did.

Q Did she indicate whether or not anyone else slept in that bedroom?

A She stated she slept in the same bed.

Q In the same what?

A Same bed.

Q Was there any discussion about how that bedroom was divided or if there was any division of the room?

A No, sir, there was not as I recall.

Q Were there any other openings off that bedroom?

A No, sir. There was one door.

Q Was there any wardrobes, closets or anything like that?

A Yes, there was one. As you walked in the room there was one closet on the left wall—it would be the north wall.

Q A single closet?

A Yes, sir.

Q Did you look in there?

[25] A Yes, I did.

Q Did you find anything in there?

A Yes, sir. I found a diaper bag half full of money.

Q After you initially asked her to search the house, did you ever ask her for permission to search again while you were in the house on that first time?

A Yes, sir. After we asked her where the bedroom was, she took us up into the bedroom and Officer Radtke again asked her if we could search the bedroom; and she granted us permission to search.

Q He did that in your presence?

A Yes, sir.

Q And she responded in your presence?

A Yes, sir.

Q Now, after you found the bag of money, did you leave the house immediately?

A Yes, I believe we did.

Q And where did you go then?

A Then we went out to the area where Mr. Mattlock was being held in the car.

Q And subsequently you returned to the house; is that correct?

A Yes, sir.

. . . .

[56]

EDWARD RADTKE,

called as a witness by the defendant herein, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. EISENBERG:

Q State your name and address, please.

A Edward M. Radtke, 128 West Franklin Street, Portage, Wisconsin.

Q Are you employed with the Columbia County Sheriff's Department?

A Yes, sir.

. . . .

[57] Q All right. Did any other officers arrive at the scene at that time?

A Shortly thereafter.

Q How many?

[58] A I would say roughly five more.

Q So there were a total of eight of you then?

A Roughly.

.

[61] Q Did you ask him whether or not he resided in the Marshall home where you arrested him or outside where you arrested him?

A Yes, sir, I believe I asked him his name which he stated at that time was William Mattlock and that he was staying at this residence.

Q Did you ask him where in the residence he was staying?

A No, sir.

[62] Q Did you ask him whether or not he paid rent or room and board to stay there?

A No, sir.

Q Did you ask him anything else at that time prior to turning him over to Officer Hucker?

A I don't believe I did.

Q What did you do then?

A I proceeded to the rear of the home.

Q With whom?

A I believe I walked by myself up to the rear where there was other officers.

Q When you got to the rear door, did any other officers join you?

A Yes, sir. There were roughly four other officers.

Q What, if anything, did the five of you do then?

A Three of them stayed outside and—Two. Two uniformed officers stayed out, I believe, and three of us went into the home.

.

[64] Q All right. Did you ask anyone for specific permission or authority to search?

A I believe I did ask Gayle Graff where William was sleeping, so on and so forth.

Q And what did she say?

A And I believe she stated that he was sleeping in an upstairs bedroom which is also occupied by her.

Q Did you then go up to that bedroom?

A Yes, sir, we did.

Q Did you ask her permission to enter that bedroom?

[65] A Yes, sir.

Q What did she say?

A Yes, you can search; I have nothing to hide.

Q Did she tell you that she had a bedroom on the first floor?

A No, sir.

Q Did you inquire whether or not she had a bedroom on the first floor?

A No, sir.

Q Did you inquire whether she had a bedroom anyplace else in that house?

A No, sir.

Q And in effect she said, I am sleeping with him in that bedroom; is that correct?

A Words to those effect.

Q Words to that effect. Did you ask Mr. Mattlock any time to search that bedroom?

A No, sir, I did not.

Q Did anybody in your presence ask him permission?

A In my presence, no.

Q Did you then search that bedroom?

A Yes, sir.

* * *

[72] Q Did you at any time in this particular matter attempt to obtain a search warrant prior to searching the Marshall home?

A I, no.

Q Did anyone to your knowledge attempt to obtain a search warrant?

A To my knowledge?

Q Yes.

A No.

Q You already had the defendant in custody immediately upon arriving at the house, did you not?

A Yes, sir.

Q Did you know of any grave emergency to enter that premises without a search warrant at that time?

[73] A At this particular time?

Q At the time you first entered the house.

A I have to answer no.

* * *

[75]

GARY CROSS,

called as a witness by the defendant herein, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. EISENBERG:

Q State your name and address, please.

A Gary Cross, Route 1, Portage, Wisconsin.

Q With whom are you employed?

A The Columbia County Sheriff's Department, Portage, Wisconsin.

* * *

[77] Q Did you ever ask Mr. Mattlock permission to enter that house?

A Did I?

Q Yes.

A No, sir.

* * *

[79] Q And did you just go from room to room searching at will?

A I stayed primarily in the kitchen.

Q And the Captain went throughout the house?

A The lower level, yes, sir.

Q Did he ask any specific permission to enter any specific room?

A Yes, sir.

[80] Q Each room he asked permission?

A No, sir.

Q Well, which specific rooms did he ask permission?

A He asked permission to look in the bedroom.

Q That was the downstairs bedroom?

A No, sir.

Q Well, now we are upstairs; is that right?

A No, we are downstairs. He asked while he was downstairs.

Q I see, okay. Downstairs he said, Mrs. Graff, may I look in the bedrooms upstairs?

A I believe he asked where her bedroom was and she said, "Upstairs"; and I believe he then asked if the defendant slept in that bedroom and her reply was, "Yes".

Q And then did he say, may I look into the bedroom?

A Yes.

Q And she said, "Go right ahead"?

A Yes.

Q And still at this time he hadn't told her why he was there?

A Not that I heard, no, sir.

Q And you didn't tell her either?

A No, sir.

Q Did you at any time prior to this seek a search warrant [81] from anyone?

A No, sir.

. . . .

[83] Q Did you just walk into the premises at that time?

A No, sir.

Q Did you ask permission?

A Captain Ohnesorge asked permission.

Q Did Miss Graff at any time ask to go out to the car to see Bill?

A She didn't ask me, no.

Q Did she ask anybody in your premises [sic]?

A Not that I know of.

Q Now, up to this time, you still hadn't told her what you were looking for, did you?

A I hadn't, no, sir.

[84] Q And nobody in your presence told her, either?

A In my presence. Do you mean—

Q That you heard. Did you hear anybody say why you were there?

A Yes, sir, I did.

Q When was this?

A I believe when Captain Ohnesorge was upstairs.

Q After he had made his search of the bedrooms?

A I don't know if he made the search then or not.

. . . .

[85] Q Did you inquire as to who paid the rent for that house prior to any of the search?

A I did not.

Q Do you know who paid the rent in that house?

A I believe the Marshalls paid the rent at that house.

Q Do you know whether or not anyone paid room and board to live in that premises?

A No, sir.

Q Did you inquire as to whether anyone paid the Marshalls room and board?

A No, sir.

* * * *

[87]

GAYLE GRAFF,

called as a witness by the defendant herein, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. EISENBERG:

* * * *

[89] Q All right. What, if anything, did you observe when you went outside?

A By the time I got outside, all they did was grab Bill away and shove him in the car.

Q What did you say then?

[90] A I went back into the house.

Q Did you close the door?

A Yes.

Q Did anybody tell you to go into the house?

A Uh-huh.

Q Who?

A They told me to get away from him.

Q Who told you that?

A The officers did.

Q All right. And that is the reason you went back into the house?

A Yes.

Q What is the next thing that happened?

A I waited in the house, and then they came into the house.

Q Now, when you say "they", who is they?

A The officers came into the house.

Q How many?

A Four, I think.

Q Do you recall who they were?

A There were three—right there (indicating).

Q Cross and Radtke and Ohnersorge?

A Yes.

Q The three on this end?

[91] A Right.

Q Did they knock on the door prior to coming in?

A No.

Q Who walked in?

A They all did.

Q Just walked right in?

A Yes.

* * *

[92] Q Did they tell you why they wanted to look around?

A No.

Q Did they tell you why they were there?

A No.

Q Did they then look around?

A Yes, they did.

Q Did they ever tell you they had a search warrant?

A No, they didn't.

Q Did they ask you if you owned or rented the premises?

A No, they didn't.

Q Did they ask you who you were?

A No.

* * *

[93] Q Did they come back into the house or not?

A They sent one guy back in.

Q Did he knock on the door?

A No.

Q Did he just walk in?

A Yes.

Q Did he ask anything of you at that time?

A He told me I could comb my hair later, to come on; he wanted to go.

Q But where?

A Up to the jail in Portage.

. . . .

[95]

WILLIAM EARL MATTLOCK,

called as a witness on his own behalf, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. EISENBERG:

. . . .

[97] Q Did they at any time ask your permission to search the Marshall premises?

A No, they did not.

Q Did anyone at any time ask you permission to search the Marshall residence?

A No, sir.

Q Did you give anyone permission to search the Marshall residence?

A No, sir.

. . . .

[100]

GAYLE GRAFF,

recalled as a witness, having been previously duly sworn, was further interrogated and testified as follows:

[101]

CROSS EXAMINATION

BY MR. OLSON:

Q You understand you are still under oath?

A Yes.

Q When did you return to Wisconsin?

A In August.

. . . .

Q And when you returned in August, where did you live?

A With my mother and father.

Q Did anyone else live there?

A Uh-huh.

Q Who?

A Bill.

[102] Q Mattlock, the defendant?

A Right.

Q Is it a fair statement to say that after August, from August until November, that you and Bill lived together?

A I refuse to answer.

THE COURT: For what reason?

THE WITNESS: Fifth Amendment.

THE COURT: You will have to be a little more explicit.

THE WITNESS: On grounds that it may tend to incriminate me.

.

[113] ARMIN OHNESORGE,

recalled as a witness by the plaintiff herein, having been previously duly sworn, was further interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. OLSON:

.

[114] Q How did you get from the downstairs to that room?

A We asked Gayle Graff where the room was. She pointed upstairs and then she led us up to the room.

.

Q Was there any discussion about the dressers?

A Yes, sir.

Q What was that discussion?

A When we went over to the dresser drawer, I asked her if this was her dresser or Bill's dresser.

Q And what did she say?

A She said "Bill has the two bottom drawers and the two top drawers are mine".

* * *

[126]

GREGG B. HUNTER,

recalled as a witness by the plaintiff herein, having been previously duly sworn, was further interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. OLSON:

Q Your name?

A Gregg Hunter.

Q And you testified here earlier today?

A Yes, sir.

Q Do you understand that you are still under oath?

A Yes, sir.

Q On the date that's been in question here today, did you have an occasion to be present for the interview of Gayle Ann Graff?

A Yes, sir.

Q Where did that interview take place?

A It took place in Portage, Wisconsin, at the Columbia County Sheriff's office.

Q Approximately what time did it take place?

A It was in the early afternoon, around 12:00, 1:00 [127] o'clock—some time around there when it commenced.

Q Who conducted that interview?

A Joel Sanders and myself.

* * *

[128] Q Did a discussion take place at that time regarding her relationship with the defendant?

A Yes, sir.

Q Tell us what took place.

A We asked her if she was married to him. She said—

MR. EISENBERG: Well, Your Honor, I am sorry to interrupt the witness. When we say "We", I would like to know who.

THE COURT: Will you respond to that question of counsel?

THE WITNESS: I did.

BY MR. OLSON:

Q What did you ask her?

A I asked her if she was married to Bill Mattlock.

Q What did she reply?

A She said, "No. I consider myself a common-law wife".

. . . .

[1]

STENOGRAPHIC TRANSCRIPT

of portion of testimony had upon hearing in the above-entitled criminal action in said court, sitting in the City of Madison, in said Western District and State of Wisconsin, the Honorable JAMES E. DOYLE, Judge, presiding, on Monday, the 5th day of April, 1971, commencing at 8:30 o'clock in the forenoon.

. . . .

[3]

ELAINE R. MARSHALL,

called as a witness by the defendant herein, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. EISENBERG:

Q Would you state your name and address, please?

A Elaine R. Marshall, Route 2, Pardeeville.

Q Do you own the home located at Route, 2 Pardeeville?

A We rent it.

[11] Q Do you recall any federal agents explaining any rights to you?

A No, they did not.

Q Did the federal agent or anyone else tell you that you had a right not to have your house searched?

A No, they did not.

[12] Q Now that you have read it, do you understand what that means?

A Not really. I guess it means that they had permission to search the house.

Q That's what your understanding is?

A Yes.

Q Do you understand that that means that you didn't have to give them permission; or don't you understand that?

A I did not know that I could refuse to let them search the house.

Q Did they exhibit a search warrant to you at any time?

A No, they did not.

[16] Q You just let him move into your house?

A When he moved Gayle up from Florida I gave him a room to stay in.

Q You gave him the room?

A Well, no. He paid me room and board; but I furnished a room. I should put it that way to you.

Q All right. How much room and board did he pay you?

A \$25 a week.

Q And was he current on his payments in November?

A Yes.

[1]

STENOGRAPHIC TRANSCRIPT

of testimony had upon hearing in the above-entitled criminal action in said court, sitting in the City of Madison, in said Western District and State of Wisconsin, the Honorable JAMES E. DOYLE, Judge, presiding, on Tuesday, April 13, 1971, commencing at 2:00 o'clock in the afternoon.

. . . .

[20]

JOEL M. SANDERS,

called as a witness by the plaintiff, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. OLSON:

Q Your name?

A Joel M. Sanders.

Q Your occupation?

A Special Agent, F.B.I., New York Office.

. . . .

Q Do you recall November 12, 1970?

A Yes, I do, sir.

Q Do you recall where you were in the early afternoon of that day?

A Yes, I do.

[21] Q And where was that?

A At the Columbia County Sheriff's office in Portage, Wisconsin.

Q Did you have an occasion to meet Gayle Graff on that date?

A Yes, I did, sir.

Q Did you have an occasion to interview her on that date?

A Yes. I, along with Special Agent Gregg B. Hunter, interviewed her in the Captain's office at the Sheriff's Department.

. . . .

[23] Q Was there any conversation about her return trip to Wisconsin?

A Yes, there was.

Q What was that conversation?

A Gayle Ann Graff stated to me that both she and Bill Mattlock returned in his automobile to Wisconsin sometime in the late summer of 1970 to her mother's house in Pardeeville, Wisconsin.

Q Did you have any discussion with her regarding her relationship with the defendant?

A Yes, sir, I did.

Q What was that discussion?

A She said that she was his common-law wife. She also said that she was not married to him.

* * *

[24] Q Did you have occasion to discuss with her whether or not she had seen the defendant on that day?

MR. EISENBERG: What day?

THE WITNESS: Yes, I did, sir.

MR. OLSON: On the day that you interviewed her.

THE WITNESS: Yes, I did.

BY MR. OLSON:

Q Tell us about that conversation?

A Gayle Ann Graff stated to me that both arose at the same time that morning from bed and that she had seen him only wearing shorts that morning.

She said that he had gone downstairs and was out of the house at the time that the Sheriff's Department officers came to the house and arrested him.

She also stated that both of them usually [25] arose from bed at approximately 10:00 or 11:00 o'clock a.m., each morning.

* * *

[30]

CROSS EXAMINATION

BY MR. EISENBERG:

* * *

Q How, at the time that you interviewed Mrs. Marshall [31] and Mrs. Graff, did you know at that time

that there was going to be a motion to suppress evidence in this case?

A No, sir.

Q Did you at any time, at the time of the interviews, have anything in your mind concerning a search warrant or a lack of one?

A No, sir.

Q Did the question of search warrants ever enter your mind prior to these motions being brought?

A No, sir.

Q Do you know what a search warrant is?

A Yes, sir.

. . . .

[1]

STENOGRAPHIC TRANSCRIPT

of testimony had upon hearing in the above-entitled criminal action in said court, sitting in the City of Madison, in said Western District and State of Wisconsin, the Honorable JAMES E. DOYLE, Judge, presiding, on Tuesday, the 22nd day of June, 1971, commencing at 9:00 o'clock in the forenoon.

. . . .

[26]

MARY CAROLINE CUPERY,

called as a witness by the plaintiff herein, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. OLSON:

Q Would you tell the Court your full name, please?

A Mary Caroline Cupery.

Q Your occupation?

A Housewife.

Q Do you have any other occupation?

A Not at the present time. We were running a restaurant.

Q When did you run a restaurant?

A Up until June of this year. June 1.

Q And what restaurant was that?

A The Speedway Restaurant.

Q And where is that located?

A South of Portage four miles.

Q How long did you operate that restaurant?

[27] A Nearly two years.

Q When you say "we", who do you mean?

A My husband and I.

Q Now in the operation of that restaurant did you ever hire outside help?

A Oh, many times.

Q Do you see anyone in court today that you hired during that period of time?

A Yes, two people.

Q Who are they, please?

A Gayle and Bill.

Q And Gayle's last name?

A Graff.

Q And Bill's last name?

A Mattlock.

Q When did you hire Bill Mattlock?

A It was in September after Labor Day.

Q Last year?

A Yes.

Q And what about Gayle Graff?

A Well, she came first. I can't remember the exact date, but it was right after Labor Day.

Q Is it fair to say then that you hired both of them within a short period of time?

[28] A Yes, they both worked for about two weeks.

Q At the time they came to work was there any representation made as to their relationship?

A Well, we just assumed that—

MR. EISENBERG: Objection; ask that it be stricken.

THE COURT: The motion is granted.

MR. OLSON: All right.

BY MR. OLSON:

Q What name did Gayle give?

A Graff.

Q And did she have any explanation for using the name Graff?

A I didn't feel it was my business and I never asked her.

Q Okay. Now did there come a time when the employment terminated?

A Yes.

Q Tell us about the circumstances surrounding the termination?

A Well, I remember it was a—

MR. EISENBERG: Objection, your honor, [29] immaterial and irrelevant, no proper foundation.

THE COURT: The objection is overruled and I will take it subject to a motion to strike if it proves irrelevant.

THE WITNESS: I remember that it was a Saturday night and we were looking forward to a busy Sunday. And all of a sudden Bill said, My wife won't be in to work tomorrow. I said, why not; and he said, My wife is not going to work all these hours. She was supposed to work only three days a week and you have been working her for six. And he said, And furthermore I won't be working anymore after tonight either.

BY MR. OLSON:

Q Now on the following day did Bill Mattlock appear?

A No.

Q Did anyone else fail to appear?

A Gail failed to appear.

Q Was there anyone else that was employed in your restaurant that he could have been referring to as "my wife"?

A No.

MR. OLSON: Thank you.

[30]

CROSS EXAMINATION

BY MR. EISENBERG:

Q Now, Mrs. Cupery, when did the FBI first contact you?

A I don't remember the exact day; I think it was in May sometime.

Q Back in May. And how many times since May to the present time have they talked to you?

A One other time.

Q And who talked to you?

A The blonde gentleman; I don't know his name.

Q Mr. Hunter?

A If that's his name; I don't know.

Q And what did Mr. Hunter ask you?

A He asked me if Gayle had ever signed anything "Mattlock" and I said "No".

Q She never signed anything "Mattlock", did she?

A No.

Q And she went under the name of Gayle Graff, didn't she?

A Yes.

Q Your answer is "right"?

A Yes.

Q Now isn't it a fact that William Mattlock said, [31] Gayle won't be in to work tonight?

A No, he said "My wife".

Q And how do you remember that he said "My wife"?

A Because I was puzzled as to their relationship.

Q What puzzled you about it?

A Well, in the time book where we keep track of who worked how many hours they were going under separate names and yet they seemed to be living together.

Q They seemed to be living together. They seemed to be friends, didn't they?

A Yes.

Q Did you ever see them in bed together?

A Heavens no.

Q Did you ever see them living together as husband and wife?

A No, I was never in their home.

Q And outside of the one time that you allege that he said "My wife won't be in tonight", at no other time did he ever refer to her as Gayle Mattlock or as his wife?

A No.

Q Nor did she ever refer to herself as his wife?

A Not that I know of.

Q Did the gentleman from the FBI or the police
[32] department who contacted you ask you several questions about whether or not Mr. Mattlock ever used the words "My wife"?

A Well, yes.

Q He said that quite a few times, didn't he?

A Yes.

RE CROSS EXAMINATION

[33]

BY MR. EISENBERG:

Q Did you pay by check?

A Yes.

Q And did you pay Gayle Graff a check in the name of Gayle Graff?

A Yes.

Q And how many checks did you give her?

A One, I believe.

Q Did you ask her a second time what her proper name was?

A Well, that's the name she gave me and the Social Security Number she gave me.

Q And her Social Security Number was in the name of Graff also, wasn't it?

A Right.

[34]

CLARKE GILBERT CUPERY,

called as a witness by the plaintiff herein, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. OLSON:

Q Would you tell the court your full name, please?

A Clarke Gilbert Cupery.

Q And you have been in court this morning throughout this hearing?

A Just about all of it. I missed the first part of it.

Q Did you hear all of the testimony of the previous witness?

A Yes.

Q And are you related to that witness?

A She is my wife.

Q How long have you been married?

A Ten years.

Q Is it correct that up until sometime in this month or the first of this month that for two years prior to that or nearly that long you were running the Speedway Restaurant?

[35] A That is right.

Q And do you recall the defendant, Bill Mattlock?

A Yes I do.

Q And do you know Gayle Graff?

A Yes.

Q Do you recall when you first meet [sic] these people?

A I don't remember the exact date but I think it was around September when they worked for us in the restaurant.

Q And do you recall how they were introduced to you?

MR. EISENBERG: Objection. There is no showing that anybody introduced them.

MR. OLSON: There is a showing that they worked for him, Mr. Eisenberg.

THE WITNESS: They applied for a job separately.

THE COURT: The objection is overruled and the answer may stand.

BY MR. EISENBERG [sic]:

Q They applied for a job separately?

A Gayle applied first and then Bill applied.

Q Did you ever have any conversation relating to the Social Security Account of Gayle Graff?

A Yes.

[36] Q Could you tell us about that?

A Well, something came up at one time about Gayle said something about her husband didn't want her to

work this many hours, only three days a week and everything else. And I said something about the name "Graff" and the name "Mattlock". And she said it had something to do with Social Security or something and I didn't catch it. And I didn't pay any attention to it or dig into it because when waitresses work for you you don't ask too many questions.

MR. OLSON: Thank you. That's all.

CROSS EXAMINATION

BY MR. EISENBERG:

Q Gayle always went under the name of Graff, didn't she?

A That's correct.

Q And Mattlock always went under the name of Mattlock, didn't he?

A That's right.

Q Did he ever say, This is my wife Gayle?

A Not those exact words, no.

Q Did she ever say, This is my husband William or Bill?

A Yes.

[37] Q When?

A When Bill was hired.

Q Oh. And where were you at that time?

A In the restaurant behind the counter.

Q And what did she say?

A She said, Why don't you give my husband a job.

Q And did you ask her at that time why she was going under the name of Graff?

A It was shortly thereafter, yes.

Q And she continued to go under the name of Graff?

A Right.

Q And you paid her under the name of Graff?

A Right.

. . . .

[38]

DURWARD MILLARD, JR.,

called as a witness by the plaintiff herein, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. OLSON:

Q Would you tell us your full name, please?

A Durward Millard, Jr.

Q Where do you reside?

A Route 2, Pardeeville.

Q Are you acquainted with the location of the Walter Marshall residence?

A Yes.

Q Where is that in relation to where you reside?

A Neighbor.

Q Have you been there on occasion?

A Yes.

Q On more than one occasion?

A Yes.

Q How many times would you estimate that you have been there?

[39] A Just several times.

Q Are you a frequent visitor there?

A Yes.

Q And how long a period of time has that been going on?

A A long time; I don't remember how long.

Q Would it be more than a year?

A Yes.

Q Perhaps more than five years?

A I would say yes.

Q Are you presently acquainted with Bill Mattlock?

A Yes.

Q Do you recall when you met him?

A It was last fall sometime.

Q And where were you when you met him?

A Down at the Marshalls'.

Q Who introduced him if anyone?

A I don't remember for sure which one it was, if it was Gayle or one of the Marshalls.

Q Do you recall the introduction?

A Yes, just being introduced.

Q How was he introduced to you?

A I believe it was just as Bill.

Q Was there any reference made to you what Bill was doing there?

[40] A No.

Q Was he identified in any way?

A Was he?

Q Yes.

A Not that I remember.

[41] Q Did you ever have an occasion to see Gayle and Bill Mattlock together?

A Yes.

Q On how many occasions?

A Several times.

Q How would Mr. Mattlock refer to Gayle?

A As Gayle.

Q Did he ever use any nicknames?

A Not that I can say for sure.

[42]

LESLIE WAYNE CROSS,

called as a witness by the plaintiff herein, having been first duly sworn, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. OLSON:

[43] Q Are you acquainted with the Walter Marshall residence?

A Very well.

Q Since August of 1970 have you has [sic] occasion to visit that home?

A I have.

Q Have you ever had an occasion to meet the defendant, Bill Mattlock?

A I was introduced to him.

Q Who introduced you to him?

A Mrs. Marshall.

Q Where did that introduction take place?

[44] A The Marshall residence.

Q When she introduced you to him how did she introduce him?

A She said I would like to have you meet Gayle's husband.

Q And who did she introduce you to?

A To Bill Mattlock.

Q Did he deny at that time that he was her husband?

A No.

Q Were there any disclaimers on his part at all?

A None.

. . . .

[46]

CROSS EXAMINATION

BY MR. EISENBERG:

Q He was completely clothed when he came downstairs, [47] wasn't he?

A Yes sir.

Q And in fact he was painting the house at the time, wasn't he?

A He started to paint the house when he got downstairs.

Q And you don't know what he was doing upstairs prior to that time?

A I did not.

Q And you don't know whether or not he was living with Gayle at that time, do you?

A I do not.

Q Now are you, Mr. Cross, also a Deputy Sheriff with Columbia County?

A I am.

. . . .

[48] Q Now when were you present at the Marshall home when you were introduced to William Mattlock?

A Well, sometime in September, I believe.

Q When in September?

A Oh, approximately the middle of the month.

[50] Q Now prior to November 12, 1970 did you tell anyone that Bill Mattlock was married to Gayle Graff?

A No.

Q And did anybody outside of Mrs. Marshall ever tell you that they were husband and wife?

A No.

Q And that's the only occasion that you have ever heard the words "This is her husband"?

A I thought that was enough.

Q You what?

A I though [sic] that was enough.

[51] Q And that's the only time you ever heard it?

A That's right.

Q And you never told any of your bosses on the Columbia County Sheriff's Department?

A No, never.

Q And on November 12 were you present when William Mattlock was arrested?

A No.

Q Were you contacted at all that day by any members of the Sheriff's Department or the FBI?

A No, I can't say that. I was in the restaurant eating when I was notified that the bank had been held up. Who called me I do not know.

Q Did anybody at any time prior to Mr. Hunter contacting you a couple weeks ago—Did you ever tell anybody that they were husband and wife?

A No.

Q Did you ever see them sleeping together?

A No.

Q Did you ever see them come out of the same bedroom together?

A I saw Gayle come downstairs and a few minutes he came down.

Q Did you ever see them come out of the same bedroom [52] together?

A I did not.

Q Did you ever see them go into the bedroom together?

A I did not.

Q Did Bill ever say "This is my wife, Gayle"?

A No.

Q Did Gayle ever say "This is my husband, Bill"?

A No.

Q Your answer?

A No.

[73] MR. OLSON: I call Armin Ohnesorge.

ARMIN OHNESORGE,

called as a witness by the plaintiff herein, having been first duly sworn, was interrogated and testified as follows:

[75]

CROSS-EXAMINATION

BY MR. EISENBERG:

Q Just answer my question. Did you determine whose
[76] clothes they were in the dresser drawer at that time?

A No.

Q Did you determine whose dresses were hanging up in the closet?

A No.

Q Did you see anybody lying in bed?

A Lying, no.

SUPREME COURT OF THE UNITED STATES

No. 72-1355

UNITED STATES, PETITIONER

v.

WILLIAM EARL MATTLOCK

ORDER ALLOWING CERTIORARI—Filed May 29, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

